

DEC 13 2005

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Date: December 13, 2005

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To: Commissioner for Patents - Mail Stop Petition

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Customer Number 000027683

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

*In re* Application of:  
Elliot *et al.*

Application Number: 09/857,325

Filed: February 14, 2002

For: Preparation and Xenotransplantation  
of Porcine Islets§  
§  
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§  
§

Attorney Docket Number: 36697.7

Confirmation Number: 3318

Art Unit: 1633

Examiner: Qian, Janice Li

PETITION UNDER 37 C. F. R. §1.59(b) TO EXPUNGE INFORMATION  
UNINTENTIONALLY SUBMITTED IN AN APPLICATION FILE

VIA FACSIMILE - 571-273-8300

MAIL STOP PETITION  
Commissioner for Patents  
PO Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

This Petition to Expunge concerns unintentionally-submitted information presented by the Petitioners in the form of a Supplemental Information Disclosure Statement (SIDS) filed on September 7, 2005 for the above-referenced application. Therefore, in accordance with 37 C. F. R. §1.59(b), the Petitioners request that the Supplemental Information Disclosure Statement, United States Patent and Trademark Office Form-1449, and all references cited therein to be expunged from the file history.

The Supplemental Information Disclosure Statement filed on September 7, 2005 contained information that is unrelated to the present application, and was erroneously submitted in the present application due to a clerical oversight. This SIDS contains references that are related to another separate matter presently pending before the Office, and are unrelated to this application. Thus, consideration of the erroneously-filed SIDS and each reference cited therein by the Examiner represents an undue burden on the Office, and a particularly undue burden upon the Examiner, as the references cited therein are not applicable to the above-captioned application.

Moreover, since consideration by the Office of this erroneously-submitted SIDS could also lengthen the time of examination and cause a potential delay in the issuance of a patent, expungement of this SIDS is also requested to prevent undue burden upon Petitioners.

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Petitioners believe that since an initial office action on the merits has not yet been received in this case, the Office can successfully expunge: **(1) the Information Disclosure Statement, (2) the accompanying PTO-Form 1449 and (e) copies of all references cited therein**, and can successfully return these documents to Applicants prior to issuance of any Action on the merits.

As stated above, the Information to be expunged was unintentionally submitted to the Patent Office, and failure to obtain expungement of these documents and return the Information to Applicants would make the information publicly available, which may cause irreparable harm to both the Petitioners and the parties of interest on whose behalf the Information was originally intended.

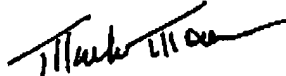
The Petitioners commit to retaining copies of the expunged Information for the period of any patent arising from the subject application, and will file a replacement Supplemental Information Disclosure Statement with the appropriate references upon grant of Applicants' petition and notification of expungement by the Office.

Petitioners confirm that the Information to be expunged is not material to the application under 37 C. F. R. § 1.56.

Included herewith is a check in the amount of \$200.00 for payment of the Petition fee as set forth in 37 C. F. R. § 1.17(g). However, the Commissioner is hereby authorized to charge any deficiencies and/or credit any overpayment to the Deposit Account Number of Haynes and Boone, LLP 08-1394. **This form submitted in duplicate.**

Petitioners respectfully request grant of petition and return of Information to be expunged from the file history as indicated above. Should the Petitions Examiner have any questions or comments regarding the subject petition, the Examiner is invited to telephone the undersigned at the number listed below.

Respectfully submitted,



Mark D. Moore, Ph.D.  
Agent for Applicants  
Registration Number 42,903

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I hereby certify that this paper is being facsimile transmitted to the United States Patent and Trademark Office Central Facsimile Number (571-273-8300) on the date shown below.

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Signature: Kim Hennessey

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The PTO did not receive the following  
listed item(s) check